

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 8

**MIDWEST TERMINALS OF TOLEDO  
INTERNATIONAL, INC.**

**and**

**CASE**

**08-CA-119493**

**INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION, LOCAL 1982, AFL-CIO**

---

**MIDWEST TERMINALS OF TOLEDO  
INTERNATIONAL, INC.**

**and**

**CASE**

**08-CA-119535**

**PRENTIS HUBBARD, AN INDIVIDUAL**

---

**MIDWEST TERMINALS OF TOLEDO  
INTERNATIONAL, INC.**

**and**

**CASE**

**08-CA-135971**

**INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION, LOCAL 1982, AFL-CIO**

---

**MIDWEST TERMINALS OF TOLEDO  
INTERNATIONAL, INC.**

**and**

**CASE**

**08-CA-136613**

**DON RUSSELL, AN INDIVIDUAL**

**COUNSEL FOR THE GENERAL COUNSEL'S REPLY TO RESPONDENT'S  
OPPOSITION TO MOTION TO CONSOLIDATE CASES**

NOW COMES Counsel for the General Counsel, pursuant to Sections 102.24 and 102.25 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, respectfully submits this Reply to Respondent's Opposition to Counsel for the General Counsel's Motion to Consolidate Cases. A Memorandum in Support is submitted below.

**MEMORANDUM IN SUPPORT**

The Respondent argues that it may be prejudiced if the proceedings are consolidated because Counsel for the General Counsel rested its case on January 30, 2015 concerning the allegations contained in the First Consolidated Complaint Cases 08-CA-119493 and 08-CA-119535, and it is now prepared to present its case. Respondent avers that because the allegations contained in the Second Consolidated Complaint Cases 08-CA-135971 and 08-CA-136613 are unrelated to the allegations in the First Consolidated Complaint, the cases should not be consolidated and it should be allowed to proceed in its case, without any delay. Respondent's assertions are not persuasive.

Employees Don Russell and Fred Victorian Jr. are alleged to be Section 8(a) (1) and (3) discriminatees in both sets of cases. As previously noted by Counsel for the General Counsel, the same evidence must be developed in each proceeding regarding the allegations pertaining to these two employees. Furthermore, separate hearings on these matters could result in disparate findings on the same set of facts. As these cases involve the same parties and, to some degree, related allegations, consolidating these cases will promote consistency and judicial economy.

The Board has long held that cases should be consolidated based on administrative efficiency when the cases arise from the same set of operative facts, involve the same

respondent, raise similar legal issues and require testimony of the same witnesses. Triad-Ultra Div. of Litton Sys. Inc., 217 NLRB 842 (197).<sup>1</sup> Complaints are often amended and cases consolidated, even after the opening of the hearing in the initial proceeding, in an effort to effectuate the purposes of the Act and to avoid unnecessary cost and delay to the parties, as well as the United States Government.<sup>2</sup> As the initial Midwest cases have not been fully litigated as anticipated, and given that Respondent has failed to present any Board law that precludes consolidation after a party has rested its case and prior to the closing of the record, consolidation is appropriate.

Accordingly, it is respectfully requested that Counsel for the General Counsel's Motion To Consolidate Cases be granted.

Dated at Cleveland, Ohio, this 13th day of March 2015.

Respectfully submitted,

By: /s/ Cheryl Sizemore  
Cheryl Sizemore  
Counsel for the General Counsel  
National Labor Relations Board, Region 8  
1240 E. 9<sup>th</sup> Street, Room 1695  
Cleveland, Ohio 44199

---

<sup>1</sup> The Board stated "We are simply permitting the consolidation of these cases for hearing to avoid the consuming and costly piecemeal litigation in separate forums, as has long been our practice with representation and complaint cases when they involve interrelated issues."

<sup>2</sup> See Alberto Culver Co., 136 NLRB 1432, 1436-1437 (1962).

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2015, copies of the foregoing Reply to Respondent's Motion was filed electronically. Notice of this filing was served by regular mail upon the following individuals:

Otis Brown, Pres.  
International Longshoremens' Association  
Local Union No. 1982, AFL-CIO  
2300 Ashland Avenue Ste 225  
Toledo, Ohio 43620-1280

Alex Johnson, Owner/Pres.  
Midwest Terminals of Toledo  
International Inc.  
3518 St. Lawrence Drive  
Toledo, Ohio 43605-1079

Ron Mason, Esq.  
Mason Law Firm Co. LPA  
425 Metro Pl. N. Ste 620  
Dublin, Ohio 43017-5357

Aaron Tulencik  
Mason Law Firm Co. LPA  
425 Metro Pl. N. Ste 620  
Dublin, Ohio 43017-5357

Don Russell  
3171 Glenwood Ave.  
Toledo, Ohio 43610

Prentis Hubbard  
1420 Goodale Ave.  
Toledo, Ohio 43606

/s/ Cheryl Sizemore

---

Cheryl Sizemore  
Counsel for the General Counsel  
National Labor Relations Board  
Region 8